YWS v LZT

HIGH COURT (KUALA LUMPUR) — DIVORCE PETITION NO WA-33–570–09 OF 2016
FAIZAH JAMALUDIN J
19 AUGUST 2020

Family Law — Matrimonial property — Equal division of nett proceeds of sale of matrimonial property — Decree nisi upon dissolution of marriage provided that nett proceeds of sale of matrimonial property was to be divided equally between parties after deduction of all costs — Parties had taken out joint loan from bank to pay for construction of property — Construction costs had not been paid to builders/contractors and respondent-husband ('RH') had solely been servicing the loan repayments — RH took out judgment debtor summons ('JDS') against petitioner-wife ('PW') seeking order that she pay 50% of the construction costs and loan instalment payments — Whether RH entitled to order sought — Whether provision in Decree Nisi as to manner in which property was to be disposed entitled RH to file the JDS to compel PW to bear 50% of the said expenses — Divorce and Matrimonial Proceedings Rules 1980 r 73

During the course of their marriage, the petitioner-wife ('PW') and the respondent-husband ('RH') had acquired two matrimonial properties ('CHD') and ('Windsor Tower'). They had also set up a company ('AHSB') in which they were both directors and shareholders. When their marriage broke down, PW filed two petitions in the High Court — one, to wind up AHSB and the other, to obtain a divorce from RH. The decree nisi (which was made absolute in three weeks) in the divorce petition provided, inter alia, that CHD and Windsor Tower were to be sold and the nett proceeds of their sale divided equally between the parties after 'all costs' had been deducted. With regard to Windsor Tower, PW did not object to the monthly loan repayments, outgoings and maintenance charges that were paid on that property to be deducted from the gross proceeds of its sale. However, with regard to CHD, PW contended that all costs for its construction and the monthly loan repayments in respect of that property should be borne by AHSB because the company had owned the property. Both PW and RH had jointly taken out a bank loan to finance the construction of CHD. About RM680,000 was owing to the builders and contractors who built CHD while RH had paid a total of about RM568,616 in loan repayments and other expenses up to the date the property was redeemed from the bank. In order to facilitate the sale of CHD, the parties agreed that they would each deposit half the construction costs of RM680,000 with their respective solicitors pending the court's determination of their dispute on the matter of the costs. Pursuant to r 73 of the Divorce and Matrimonial

Proceedings Rules 1980, RH filed a judgment debtor summons ('JDS') against PW to recover from her 50% of the construction costs of CHD as well as of the monthly loan repayments that had been paid in respect of the property.

Held, inter alia, ordering PW to bear 50% of both the construction costs of CHD as well as the total loan repayments on the property:

(1) PW's contention that AHSB was the owner of CHD was wrong in fact and in law. The issue document of title clearly showed that PW and RH were the registered joint owners of the property (see para 35).

(2) PW's argument that the JDS should be dismissed because RH had not obtained any judgment against her was wrong. A decree nisi constituted an order made in matrimonial proceedings for the payment of money and a JDS could be filed by one party against the other on the latter's failure to make payments ordered under the decree nisi. In the instant case, although the decree nisi did not expressly state that PW was to pay RH 50% of the construction costs and the loan instalments, it expressly stated that the proceeds of sale of CHD shall be apportioned equally between the parties after deducting 'all costs'. In the context of the decree nisi, RH was entitled to enforce the terms of the decree nisi against PW for recovery of her 50% share of the construction costs and loan instalment payments. Accordingly: (a) PW had to pay RH within 30 days RM284,308.16 towards the loan instalment payments and other expenses which RH had paid on her behalf between the date of the decree nisi and the date of redemption of the loan; and (b) within 14 days, PW's solicitors must utilise the RM333,144.36 stakeholder sum they held towards settling the respective amounts due to the named contractors and builders of CHD and return any balance remaining after such payment, to PW (see paras 27, 32–33 & 40).

[Bahasa Malaysia summary

Sepanjang perkahwinan mereka, isteri pempetisyen ('IP') dan suami responden ('SR') telah membeli dua harta perkahwinan ('CHD') dan ('Windsor Tower'). Mereka juga telah menubuhkan sebuah syarikat ('AHSB') di mana mereka adalah pengarah dan pemegang saham. Apabila perkahwinan mereka berakhir, IP telah memfailkan dua petisyen di Mahkamah Tinggi — satu, untuk menggulung AHSB dan yang kedua, untuk memperoleh perceraian dari SR. Dekri nisi (yang dibuat secara mutlak dalam tiga minggu) dalam petisyen perceraian memperuntukkan, antara lain, bahawa CHD dan Windsor Tower akan dijual dan hasil bersih penjualan mereka dibahagi secara sama antara pihak-pihak setelah 'semua kos' ditolak . Berkenaan dengan Windsor Tower, IP tidak membantah pembayaran pinjaman bulanan, pengeluaran dan caj penyelenggaraan yang dibayar ke atas hartanah tersebut yang akan ditolak dari hasil penjualan kasar hartanah tersebut. Namun, berkenaan dengan CHD, IP berpendapat bahawa kesemua kos bagi pembinaannya dan pembayaran

pinjaman bulanan berkenaan dengan hartanah tersebut seharusnya ditanggung oleh AHSB kerana syarikat tersebut memiliki hartanah tersebut. Kedua-dua IP dan SR bersama-sama memohon pinjaman bank untuk membiayai pembinaan CHD. Kira-kira RM680,000 terhutang kepada pemaju dan kontraktor yang membina CHD sementara SR telah membayar sejumlah RM568,616 pembayaran semula pinjaman dan perbelanjaan lain sehingga tarikh harta tanah ditebus dari bank. Untuk memudahkan penjualan CHD, pihak pihak bersetuju bahawa mereka masing-masing akan mendepositkan separuh kos pembinaan sebanyak RM680,000 kepada peguamcara masing-masing sementara menunggu keputusan Mahkamah terhadap pertikaian mereka mengenai masalah kos tersebut. Mengikut k 73 Kaedah-Kaedah Prosiding Perceraian dan Hal-Ehwal Perkahwinan 1980, SR telah memfailkan saman penghutang penghakiman ('JDS') terhadap IP untuk mendapatkan kembali dari beliau 50% kos pembinaan CHD serta pembayaran balik pinjaman bulanan yang telah dibayar berkenaan dengan hartanah tersebut.

Diputuskan, antara lain, memerintahkan IP untuk menanggung 50% dari kedua-dua kos pembinaan CHD serta jumlah pembayaran balik pinjaman ke atas hartanah tersebut:

(1) IP berpendapat bahawa AHSB adalah pemilik CHD adalah salah pada fakta dan undang-undang. Isu dokumen hakmilik dengan jelas menunjukkan bahawa IP dan SR adalah pemilik berdaftar hartanah tersebut (lihat perenggan 35).

(2) Hujah IP bahawa JDS harus diketepikan kerana SR tidak mendapat penghakiman terhadapnya adalah salah. Dekri nisi merupakan perintah yang dibuat dalam proses perkawinan untuk pembayaran wang dan JDS dapat difailkan oleh satu pihak terhadap pihak lain atas kegagalan pihak kedua membuat pembayaran yang diperintahkan berdasarkan dekri nisi. Dalam kes semasa, walaupun dekri nisi tidak secara jelas menyatakan bahawa IP harus membayar SR 50% dari kos pembinaan dan pembiayaan pinjaman, ianya dengan jelas menyatakan bahawa hasil penjualan CHD akan dibahagi sama rata antara pihak-pihak setelah ditolak 'kesemua kos'. Dalam konteks dekri nisi, SR berhak untuk menguatkuasakan terma dekri nisi terhadap IP untuk mendapatkan kembali 50% bahagiannya dari kos pembinaan dan pembayaran semula ansuran pinjaman. Oleh itu: (a) IP harus membayar SR dalam masa 30 hari sebanyak RM284,308.16 untuk pembayaran semula ansuran pinjaman dan perbelanjaan lain yang telah dibayar oleh SR bagi pihaknya antara tarikh dekri nisi dan tarikh penebusan pinjaman; dan (b) dalam masa 14 hari, peguamcara IP mesti menggunakan jumlah RM333,144.36 wang tahanan yang mereka miliki untuk menyelesaikan jumlah yang perlu dibayar kepada kontraktor dan pemaju CHD yang dinamakan dan mengembalikan baki yang tinggal setelah pembayaran

tersebut, kepada IP (lihat perenggan 27, 32–33 & 40).]

Cases referred to

Lim Wee Kiat v Yeow Li Li [2019] MLJU 557; [2019] 1 LNS 817; [2019] AMEJ 0624, HC (distd)

Wong Mi-Li v Tan See Hwee [2018] 1 MLJU 902; [2018] AMEJ 0760, HC (refd)

Legislation referred to

Companies Act 1965 s 181
Debtors Act 1957 s 4(1)
Divorce and Matrimonial Proceedings Rules 1980 r 73, 73(1)
Rules of Court 2012 Form 83

Azzuan Shah bin Abd Razak (Dee, Netto, Fatimah & Ng) for the petitioner.
CS Ong (Lydia Wong with him) (Siong & Rita) for the respondent.

Faizah Jamaludin J:

INTRODUCTION

[1] Enclosure 70 is a judgment debtor summons filed by the respondent husband ('RH') against the petitioner wife ('PW') for recovery of part of the sale proceeds of one of their matrimonial properties located in Country Heights Damansara, 60000 Kuala Lumpur ('CHD property').

[2] RH's application in encl 70 is made pursuant to a decree nisi, recorded with the consent of the parties on 1 December 2016. It was ordered in the decree nisi that 'all costs' are to be deducted from the sale proceeds of the CHD property and the Windsor property (as defined below) prior to the equal distribution of the nett sale proceeds of each the properties between PW and RH.

[3] All costs relating to the Windsor property had been deducted from the parties' respective share of the sale proceeds of the Windsor property prior to the equal division of the nett sale proceeds between them. However, PW refused that her share of 'all costs' of the CHD property be deducted from the sale proceeds of the said property. Hence, the filing of this judgment debtor summons against her by RH pursuant to r 73 of the Divorce and Matrimonial Proceedings Rules 1980.

[4] At the conclusion of the hearing of the judgment debtor summons, for the reasons set out in this judgment, I had ordered, inter alia, that PW pays RH her 50% share of the construction costs of the CHD property and the loan

A instalments paid by RH prior to the sale of the said property.

[5] The reasons for the order are set out in full in this judgment.

MATERIAL FACTS

B

[6] During the course of their marriage, RH and PW founded a company known as AHSB Holdings Sdn Bhd ('AHSB') — they were both directors and shareholders of AHSB.

C

[7] When their marriage broke down, PW filed an action at the Kuala Lumpur High Court (Originating Summons No WA-24NCC-356–08 of 2016) ('the OS action') against RH and AHSB, inter alia, for an order to wind-up AHSB pursuant to s 181 of the Companies Act 1965. A month later, she filed the petition for divorce in this suit ('divorce petition').

D

[8] The parties arrived at an amicable settlement in relation to both actions and the following consent orders were recorded by the Kuala Lumpur High Court:

E

(a) for the OS action, an order dated 29 November 2016 ('the OS order'); and

(b) for the divorce petition, a decree nisi dated 1 December 2016 ('the decree nisi').

F

[9] The CHD property is one of the two matrimonial properties sold pursuant to the decree nisi. The other matrimonial property is an apartment unit at Windsor Tower, Plaza Damas (Block B), Jalan Sri Hartamas, Taman Sri Hartamas, 50480 Kuala Lumpur ('the Windsor property').

G

[10] Pursuant to the OS order, PW's shares in AHSB were purchased AHSB for the sum of RM2m and she resigned as director of AHSB.

H **[11]** Pursuant to the decree nisi, the CHD property and the Windsor property were to be sold and the proceeds from the sale are to be divided equally between the parties after deducting all costs.

[12] The decree nisi provides, inter alia, in respect of the sale of both the I CHD property and the Windsor property as follows:

> 8. Hartanah beralamat di ... Country Heights Damansara, 60000 Kuala Lumpur dijual di dalam tempoh masa 12 bulan dan sekiranya hartanah tersebut tidak dijual dalam tempoh masa tersebut, satu tempoh masa baru akan dipersetujui di antara Responden Suami dan Pempetisyen Isteri. Hasil jualan tersebut akan dibahagikan

secara sama rata di antara Pempetisyen Isteri dan Respondent Suami setelah menolak kesemua kos.

9. Hartanah beralamat di ... Windsor Tower, Plaza Damas (Block B), Jalan Sri Hartamas, Taman Sri Hartamas, 50480 Kuala Lumpur akan dijual di dalam tempoh masa 12 bulan dan sekiranya hartanah tersebut tidak dijual dalam tempoh masa tersebut, satu tempoh masa baru akan dipersetujui di antara Responden Suami dan Pempetisyen Isteri. Hasil jualan tersebut akan dibahagikan secara sama rata di antara Pempetisyen Isteri dan Respondent Suami setelah menolak kesemua kos.

[13] The decree nisi was made absolute on 21 December 2016.

[14] The crux of the dispute between PW and RH is the phrase 'kesemua kos' (which in English means 'all costs') in paras 8–9 of the decree nisi.

[15] On 25 May 2017, PW filed an application ('encl 22') to vary the decree nisi, including the orders in paras 8–9, where PW prayed, inter alia, to limit the costs that can be deducted from the proceeds of sale of the CHD property and the Windsor property before equally dividing the same between her and RH. PW's prayers in encl 22, inter alia, are as below:

(a) in respect of the CHD property, the PW prayed that para 8 of the decree nisi be amended to state that: (i) 'all costs' refer to the costs associated with the sale of the CHD property and the redemption sum payable to CIMB only; (ii) that pending the disposal of the CHD property, RH to be responsible for all the monthly instalments of the housing loan to CIMB and all other expenses/costs such as quit rent, assessment, repair costs and the like; and (iii) that RH to be solely responsible to settle all the amount owing to the consultants and contractors in respect of the construction of the CHD property for the sum of approximately RM678,851.22; and

(b) in respect of the Windsor property; the PW prayed that that para 9 of the decree nisi be amended to state that: (i) 'all costs' refers to the costs associated with the sale of the Windsor property and the redemption sum payable to Public Bank Bhd only; and (ii) that pending the disposal of the Windsor property, the RH to be responsible for all the monthly instalments of the housing loan to Public Bank Bhd and all other expenses/costs such as quit rent, assessment, repair costs and the like.

[16] However, before encl 22 was heard by this court, both the CHD property and the Windsor property were sold.

[17] Despite her application in encl 22, the PW agreed for all costs incurred on the Windsor property, being the monthly loan instalments, outgoings and

maintenance charges to be deducted from the proceeds of sale before equal division of the nett proceeds between RH and her.

[18] However, in contrast to the position she took with the Windsor property, PW objected to the deduction of all costs incurred on the CHD property from her share of the sale proceeds. The costs to be deducted from PW's share of the proceeds of sale of the CHD property are RM333,144.36, being 50% of the sum of owing to the contractors and builders being the construction costs of the CHD property; and RM284,208.16, being 50% of the monthly loan instalments paid by the RH between the date of the decree nisi and the eventual sale of the CHD property.

[19] In order not to jeopardise the sale of the CHD property, PW and RH agreed, inter alia, that each of them deposit with their respective solicitors as stakeholders, the sum of RM340,000 from their portion of the proceeds of sale. These sums were meant to cover the construction costs owing on the CHD property pending the outcome of PW's application in encl 22.

[20] Although the parties agreed to wait for the outcome of encl 22 to determine if the construction costs and the loan instalments, should be deducted from the proceeds of sale of the CHD property, PW instructed her solicitors to withdraw her application in encl 22 when the same came up for hearing on 2 May 2019.

JUDGMENT DEBTOR SUMMONS

[21] PW's withdrawal of encl 22 led to RH filing this judgment debtor summons against her, since the issue of what amounts to 'all costs' for the CHD property remained unresolved, namely whether: (a) the amount construction costs owing to the contractors and builders of the CHD property; and (b) the loan instalments paid by RH to CIMB Bank prior to the sale of the CHD property ('construction costs and loan instalments'); should be deducted from the proceeds of sale of the CHD property.

[22] RH's position is that construction costs and loan instalments should be deducted from the proceeds of sale of the CHD property before the proceeds are distributed equally between the parties. Whereas, PW contends that the construction costs and loan instalments should not be deducted from the proceeds of sale of the CHD property. Her position is that the CHD property was purchased by AHSB, therefore, the construction costs and loan instalments should be borne by AHSB and not by PW and RH personally. She says that she had agreed to deduct all costs related to the Windsor property because the property was purchased by the parties personally.

[23] PW was examined under oath at the hearing of this encl 70. During the examination, PW stated that she no longer seeks to dispute the meaning of the term 'all costs' in paras 8–9 of the decree nisi. She said that she now agrees that the terms were applied correctly in the sale of the Windsor property, whereby the monthly instalments, outgoings and maintenance paid for the Property were deducted from the sale proceeds of the Windsor property prior to the equal division of the nett sale proceeds between PW and RH.

[24] However, she contends that the costs for the CHD property should be treated differently. She says this is because the CHD property was purchased by AHSB and that 'all costs' relating to the CHD property must be borne by AHSB. Although she had received RM2m for her shares in AHSB pursuant to the settlement with RH in the OS action, PW's position is that she had lost her entitlements to AHSB in the settlement with RH and that it is unfair for her to be liable to share the burden of paying 50% of the costs relating to the CHD property.

[25] Learned counsel for RH, Mr CS Ong, submits that PW's position that the CHD property was purchased by AHSB and that 'all costs' relating to the CHD property must be borne by AHSB, is baseless. This is because the evidence shows that the CHD property belonged to PW and RH and not to AHSB — the issue document of title of the CHD property clearly shows that both PW and RH are the registered owners in equal shares of the CHD property. Additionally, the letter of approval for the loan dated 25 April 2013 from CIMB Bank Bhd, expressly states that PW and RW are co-borrowers of the loan for the construction of the CHD property.

[26] It is telling that learned counsel for PW, Encik Azzuan Shah, in his submissions for this encl 70, did not put forward or address his client's contention that the CHD property is owned by AHSB and the costs should be borne by the company.

[27] Instead, Encik Azzuan argues that RH's judgment debtor summons against PW should be dismissed because RH did not obtain a judgment against PW prior to filing the judgment debtor summons against her. Encik Azzuan cites the case of *Lim Wee Kiat v Yeow Li Li* [2019] MLJU 557; [2019] 1 LNS 817; [2019] AMEJ 0624, where the Shah Alam High Court found the petitioner wife's failure to apply for leave of the court prior to issuing the judgment summons was fatal.

[28] However, the facts in *Lim Wee Kiat* can be distinguished from the facts in this instant case. In *Lim Wee Kiat*, the decree nisi ordered that husband shall have custody, care and control of the children of the marriage and that he is to maintain the children. Notwithstanding the decree nisi, the wife on her own

accord incurred her own expenses on the children and then sought to recover those expenses from her ex-husband by way of a judgment debtor summons. The Shah Alam High Court found that there was no court order or judgment on the expenses incurred by the wife to enable her to recover the said expenses by way of a judgment debtor summons against ex-husband. The wife also failed to apply for leave of the court prior to issuing the judgment debtor summons on her ex-husband. By reason of the wife's failure to seek leave of court before issuing the judgement debtor summons against the husband and the fact that there was no court order or judgment for the expenses incurred by wife, the Shah Alam High Court in *Lim Wee Kiat* dismissed the wife's judgment debtor summons against the husband.

[29] In contrast, in this instant case, RH had sought leave of this court before issuing the judgment debtor summons against PW. Also, RH is seeking recovery of PW's equal share of 'all costs' from the proceeds of sale of the CHD property pursuant to the decree nisi recorded by this court with the consent of the parties. Unlike the decree nisi in *Lim Wee Kiat*, this court had ordered in para 8 of the decree nisi that the proceeds of sale of the CHD property shall be apportioned equally between PW and RH after deducting 'all costs'.

[30] RH had filed the judgment debtor summons under r 73 of the Divorce and Matrimonial Proceedings Rules 1980 ('the DMPR 1980'). Rule 73(1) of the DMPR 1980 states as follows:

> (1) In this Rule and in Rules 74 and 75, unless the context other-wise requires —
>
> 'order' means an order made in matrimonial proceedings for the payment of money;
>
> 'judgment creditor' means a person entitled to enforce an order under section 5 of the Debtors Act 1957.
>
> 'debtor' means a person liable under an order;
>
> 'judgment summons' means a summons under section 5 of the Debtors Ordinance 1957 requiring a debtor to appear and be examined on oath as to his means.

[31] Learned counsel for PW also cites as authority the Shah Alam High Court case of *Wong Mi-Li v Tan See Hwee* [2018] 1 MLJU 902; [2018] AMEJ 0760. In that case, the wife had filed a judgment debtor summons against the husband for his failure to comply with the orders for payment in the decree nisi. Hayatul Akmal JC (as she then was) allowed the wife's judgment debtor summons for a smaller amount than that claimed because Her Ladyship found that the wife was unable 'to adduce sufficient materials of evidential value save and except for speculations to assist the court to come to a conclusion that the required threshold (of RM15,000 and above) had in fact been attained.

[32] Contrary to Encik Azzuan's submission, it is clear from the ratio

decidendi of the Shah Alam High Court in *Wong Mi-Li v Tan See Hwee*, which he had cited as authority, that a decree nisi may be an 'order made in matrimonial proceedings for the payment of money' and that the parties can file a judgment debtor summons for the other party's failure to make the payments ordered under the decree nisi.

[33] In this instant case, although the order in para 8 of the decree nisi does not expressly state that PW is to pay RH 50% of the construction costs and loan instalments, the order in para 8 expressly states that that the proceeds of sale of the CHD property shall be apportioned equally between PW and RH after deducting 'all costs'. In this regards, s 4(1) of the Debtors Act 1957 expressly states that a party entitled to enforce a judgment of a court for the recovery or payment of money may file a judgment debtor summons. Therefore, in the context of the decree nisi, RH is a party who is entitled to enforce the terms of the decree nisi against PW for the recovery of her 50% share of the construction costs and loan instalments.

[34] It is important to note that PW does not deny that the construction costs and loan instalments RH is seeking to recover from her were legitimately incurred for the construction of the CHD property and payment of the loan instalments were legitimately paid to CIMB Bank. Her reason for refusing to pay for her share of the costs is because to her the costs should be borne by AHSB, and not by the parties.

[35] PW's contention that AHSB is the owner of the CHD property is clearly wrong in fact and in law. Even her own counsel chose not to advance PW's contention in his submissions before this court. The registered owners of the CHD property stated on the issue of document of title of the said property are PW and RH. It is not AHSB.

[36] Furthermore, as regards the construction costs, PW's counsel, Mr Choo Dee Wei, in his affidavit affirmed on 15 July 2019, averred that both PW and RH acknowledged that the contractors and builders who had constructed the CHD property had not been paid and the parties agreed to aside the sum of RM680,000 from the proceeds of sale of the CHD property for payment of the construction costs owing; where RM340,000 is currently held by RH's solicitor, Messrs Siong & Rita, as stakeholder for RH and RM340,000 is held by PW's solicitor, Messrs Dee, Netto, Fatimah & Ng, as stakeholder for PW, for the purpose of paying the contractors and builders upon the disposal of PW's application in encl 22. This agreement is reflected in Mr Choo's email dated 22 October 2018 to RH's counsel, Mr CS Ong, shown as exh 'CDW1' of his affidavit. In the said email, Mr Choo stated:

> 1. With regards to the Country Heights Property, my client is agreeable to have half of the outstanding construction costs due to the contractors and builders of the said

property placed with a stakeholder. The total outstanding said costs is approximately RM680,000.00.

2. The purpose of the above stakeholder sum is to await the court's decision on my client's application to vary the terms of the decree nisi dated 1.1.22016 [sic] (Enc. 22).

3. At this juncture, half of the outstanding construction costs due to the contractors and builders of the above property [CHD Property] would be placed with my office as stakeholder. The other half of the said construction costs shall be placed with your firm as stakeholder.

4. *The respective stakeholder sums will come from the balance purchase price from the sale of the above property.* (Emphasis added.)

[37] With regards to the monthly loan instalments, PW's position as stated in Mr Choo's abovementioned email of to Mr Ong, is different from her testimony in court during her examination for purposes of the judgment debtor summons. PW's position as stated in Mr Choo's email is that RH should continue to pay the monthly instalments until redemption of the loan 'as the monthly instalments have always been paid by your client [RH] and that your client is in occupation of the said property.' Mr Choo went on to state:

7. I further take cognisance that the monthly repayments issue is also one of the subject matter[s] in my client's application and is to be determined by the Court. As such, notwithstanding the signing of the sale and purchase by our respective clients as well as my client's position in not agreeing to have the monthly repayments placed with stakeholders (for reason abovementioned), it is still a live issue to be determined by the Court.

[38] However, during her examination in this encl 70, PW said that she did not agree to deducting half her share of the sale proceeds for the construction costs and loan instalments because both these costs should be borne by AHSB as AHSB is the owner of the CHD property.

[39] For these reasons, I'm unable agree with Encik Azzuan's submission that RH's filing of the judgment debtor summons after the sale of the CHD property is an afterthought and an abuse of court process, and that it should be dismissed.

DECISION

[40] Accordingly, for the reasons above, at the conclusion of the hearing of RH's judgment debtor summons, this court made the following orders:

(a) PW pays RH the sum of RM284,308.16 being fifty percent (50%) of the loan instalment payments and other expenses paid by RH on PW's behalf

for the CHD property between the date of the decree nisi and the date of the redemption of the loan of the said matrimonial property within 30 days from the date of this order;

(b) PW's solicitors, Messrs Dee, Netto, Fatimah & Ng ('the said firm') release the sum of RM333,144.36 held by the said firm as stakeholders within 14 days from the date of this order, to the contractors and builders named and for the respective amounts set out in the column next to each of the said contractors' and builders' names, in the table in para 2 of the letter from Messrs. Siong & Rita dated 6 May 2019 to the said firm. The balance of the sums held after paying the said contractors and builders, if any, be returned to PW;

(c) cost of RM8,000 to be paid by PW to RH within 30 days from the date of this order, subject to the payment of the allocatur fee; and

(d) there shall be endorsed on the copy of this order a notice in Form 83 of the Rules of Court 2012, informing PW and the said firm if either of them neglect to obey this order within the time specified herein, they shall be liable to a process of execution to compel them to obey it.

Order accordingly.

Reported by Ashok Kumar